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No. 00-1089

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC.,

Petitioner,

v.

ELLA WILLIAMS,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Whether the Sixth Circuit correctly held—in conflict with the established rule in other circuits—that an impairment precluding an individual from performing only a limited number of tasks associated with a specific job qualifies as a disability under the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq*.

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

Petitioner Toyota Motor Manufacturing, Kentucky, Inc. was defendant in the District Court and appellee before the Court of Appeals for the Sixth Circuit. Pursuant to S. Ct. Rule 29.6, petitioner notes that it is wholly owned by Toyota Motor Manufacturing North America, Inc., which is in turn wholly owned by Toyota Motor, North America, Inc., which is in turn wholly owned by Toyota Motor Corporation.

Respondent Ella Williams was plaintiff before the District Court and appellant before the Court of Appeals for the Sixth Circuit.

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BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the Sixth Circuit is reported at 224 F.3d 840 and reprinted in the appendix to the petition for certiorari ("Pet. App.") at 1a. That opinion amended and superseded a previous opinion, reprinted at Pet. App. 12a. The opinion of the District Court is not reported and is reprinted at Pet. App. 23a.

JURISDICTION

The initial judgment of the Sixth Circuit, entered on July 10, 2000, was withdrawn and an amended judgment entered on August 29, 2000. Pet. App. 1a. A timely petition for rehearing and rehearing en banc was denied on October 12,

2000. Pet. App. 57a. The petition for certiorari was filed on January 5, 2001, and granted on April 16, 2001. 121 S. Ct. 1600. The jurisdiction of the Sixth Circuit was based on 28 U.S.C. § 1291. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Section 3(2)(A) of the Americans with Disabilities Act of 1990 ("ADA"), Pub. L. No. 101-336, 104 Stat. 327, 329-330, 42 U.S.C. § 12102(2)(A), provides, in pertinent part: "The term 'disability' means, with respect to an individual * * * a physical or mental impairment that substantially limits one or more of the major life activities of such individual."

Section 1630.2(i) of Title 29, Code of Federal Regulations, provides: "Major Life Activities means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working."

Section 1630.2(j)(1)(i), (ii) of Title 29, Code of Federal Regulations, provides, in pertinent part: "The term substantially limits means: Unable to perform a major life activity * * * or [s]ignificantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity."

Other pertinent statutory and regulatory provisions are reprinted in the addendum hereto.

INTRODUCTION

The Americans with Disabilities Act is an antidiscrimination statute. By its terms it covers only those who have a "disability"—defined as an "impairment that substantially limits one or more of the major life activities." 42 U.S.C. § 12102(2)(A). The Sixth Circuit in this case found the

respondent, Ella Williams, disabled under the ADA because an impairment "substantially limit[ed] her ability to perform the range of manual tasks associated with an assembly line job"—one "requir[ing] the gripping of tools and arms to be kept overhead or at shoulder level repetitively for an extended period of time." Pet. App. 4a, 6a. Even though Williams could perform almost all other manual tasks at both work and home with no difficulty, including the manual tasks required by several other assembly-line positions, the court below found her substantially limited in the major life activity of performing manual tasks because she could not perform the narrow category of tasks associated with her specific job.

The Sixth Circuit's analysis conflicts with the statutory text, which requires that an impairment "substantially limit[]" a "major life activit[y]," 42 U.S.C. § 12102(2)(A), this Court's precedents, which have emphasized that the Act "concerns itself only with limitations that are in fact substantial" and that "significantly restrict" the ability to perform a major life activity, *Albertson's, Inc.* v. *Kirkingburg*, 527 U.S. 555, 563 (1999), and the regulatory guidance, which specifies that an individual is "disabled" only if she is "significantly restrict[ed]" in performing "basic activities" compared to the average person in the general population. 29 C.F.R. § 1630.2(i), (j)(1)(ii) & Appendix. The decision below also conflicts with the policy of the Act, by forcing employers to find an accommodation for individuals who may suffer from an impairment but are not disabled, thereby limiting available opportunities at work for the truly disabled individuals the Act was intended to protect.

Williams's difficulties performing a particular job requiring repetitive use of a tool with her arms above shoulder level for an extended period of time simply tell nothing about her general ability to carry out the major life activity of performing manual tasks. In finding a disability on the basis of that narrow showing, the decision below improperly

merged analysis under the major life activity of performing manual tasks with that of working, and circumvented the established rule that "[t]he inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working." *Id.* § 1630.2(j)(3)(i). It did so by finding a disability based solely on the inability to perform the *manual tasks* associated with a single, particular job. That decision should be reversed.

STATEMENT OF THE CASE

Located in Georgetown, Kentucky, petitioner Toyota Motor Manufacturing, Kentucky, Inc. ("TMMK") employs more than 7,500 individuals, many of whom work on assembly lines that produce Toyota automobiles sold in the United States and abroad. Williams joined TMMK in 1990, and soon began work on an assembly line that fabricated engines. Within months, however, she developed bilateral carpal tunnel syndrome ("CTS") in her wrists and bilateral tendinitis in her neck and arms, each affliction apparently the product of having had to grip vibrating pneumatic tools to perform her job.[1] Williams eventually consulted a physician, who "suggested that [she] avoid overhead work, constant repetitive use of the hands and arms for flexion or extension and vibratory tools." J.A. 37. He also limited her to lifting no more than twenty pounds and restricted frequent lifting or carrying to objects weighing up to ten pounds. *Id.* 45. Notwithstanding these limitations, Williams's physician believed that she could continue to work at TMMK. Pet. App. 25a.

[1] CTS "is caused by compression of the median nerve as it passes through the wrist between flexor tendons and the transverse carpal ligament. This area is called the carpal tunnel." 3 Robert K. Ausman & Dean E. Snyder, *Ausman & Snyder's Medical Library* § 4:18, at 53 (1989).

In an effort to accommodate Williams, TMMK assigned her to various "modified duty" jobs between 1991 and 1993. Despite those efforts, Williams spent months at a time during that period on medical leave, and eventually filed a claim under the Kentucky Workers' Compensation Act, which was settled in 1993. That same year, she filed another complaint against TMMK, this time in federal court under the ADA, claiming that she was denied a reasonable accommodation. That suit, too, was settled, clearing the way for Williams to return to work at TMMK in December 1993.

In its continuing effort to accommodate her, TMMK reassigned Williams to Quality Control Inspection Operations ("QCIO"), a unit of the assembly line known for having "the 'easiest jobs' at TMMK." Pet. App. 25a. There are four QCIO work stations, and Williams rotated each week between the two least physically taxing. In the first of these—known as Assembly Paint—she visually inspected one side of each painted car as it moved along a conveyor, searching for imperfections that might have occurred during the assembly or paint process. For a while, that job also required Williams to open and shut the doors, trunk, and hood of each passing car. Demanding slightly more physical exertion, the second QCIO position—Paint Inspection—required Williams to use both arms to wipe down each painted car as it progressed along the conveyor. Throughout her approximately three-year tenure with QCIO, "[i]t is undisputed that Williams was physically capable of performing these jobs and that her actual performance was satisfactory." *Id.* 26a.

Eventually, as part of a general initiative to increase factory productivity, TMMK determined that every QCIO employee should be capable of rotating among all four QCIO positions. One of the two that Williams had yet to work was another paint-inspection position called ED Surface Repair, also known as ED Inspection. This job required Williams, using a wooden-handled sponge, to apply a highlight oil to portions of one side of a car as it passed along the assembly line. The

oil highlighted potential flaws to facilitate visual inspection of the vehicle. Beyond the need to grip a tool, the job also differed from Williams's previous QCIO roles in that she had to work at regular intervals with her hands and arms at or above shoulder height. *Id.* 2a, 27a; Crane Dep. 60-61 (Oct. 2, 1997). Before Williams was rotated to this new position, TMMK's Industrial Health Services studied the ED Inspection job and determined that its physical demands would not exceed Williams's work restrictions. Mills Dep. 42-43, 53-59 (Oct. 2, 1997).

Although she completed without difficulty a week-long training regimen for this new position, Williams allegedly began to experience pain in her arms, hands, shoulders, and neck after several weeks at the new job. By her own account, Williams concluded that she was physically incapable of performing the duties that this new position demanded. She did not, however, consider herself unable to perform all assembly-line work. In fact, Williams herself suggested that TMMK return her to her previous two positions, both of which she "always maintained that she could perform without difficulty." Pet App. 27a. Due to her on-going problems, however, Williams eventually refused to show up for work. TMMK, in turn, deemed her to have voluntarily resigned and terminated her employment.

Williams subsequently brought suit under the ADA, claiming that TMMK had discriminated against her because of her disability by failing to offer her a reasonable accommodation. TMMK moved for summary judgment on the ground that Williams's ailments did not constitute a "disability" under the Act. *See* 42 U.S.C. § 12102(2)(A) (defining "disability" as an "impairment that substantially limits one or more of the major life activities of [an] individual"). Although Williams argued that her impairment affected such major life activities as performing manual tasks and work-

ing,[2] TMMK maintained that an inability to perform only a narrow subset of assembly-line duties—while remaining perfectly capable of executing a host of other manual tasks, including the very assembly-line work Williams had performed during the previous three years—did not constitute an "impairment that substantially limits one or more of the major life activities." 42 U.S.C. § 12102(2)(A).

The District Court granted TMMK's motion for summary judgment. With respect to the major life activity of performing manual tasks, the court agreed with TMMK that Williams's claim was "irretrievably contradicted by [her] continual insistence that she could perform the tasks in assembly and paint inspection without difficulty; positions requiring manual tasks." Pet. App. 36a. Turning to the major life activity of working, the court found dispositive the well-established principle that to be considered substantially limited in that major life activity, an ADA plaintiff "must show more than an inability to perform a single job or the job of her choice." *Id.* 37a (citing *Skorup* v. *Modern Door Corp.*, 153 F.3d 512, 515 (7th Cir. 1998); *Gilday* v. *Mecosta County*, 124 F.3d 760, 767 (6th Cir. 1997)).[3]

Williams appealed, and a divided panel of the Sixth Circuit reversed. Pet. App. 1a. In reaching its decision, the panel purported to resolve only the question whether "Williams is substantially limited in performing manual tasks." *Id.* 5a. It

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[2] Williams also suggested that her impairment limited the major life activities of "housework," "gardening," and "playing with her children." Pet. App. 34a-35a. The District Court rejected these claims, *id.* 35a-36a, and Williams did not press them on appeal.

[3] Williams also maintained that TMMK violated the ADA and the Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.*, by discontinuing her employment when she refused to return to work. On both claims, the Court of Appeals affirmed the District Court's grant of summary judgment in favor of TMMK. Pet. App. 6a-8a.

noted, however, that in *Sutton* v. *United Air Lines, Inc.*, 527 U.S. 471 (1999), this Court held that to be substantially limited in the major life activity of *working*, an "individual [must] be unable to perform a class or broad range of jobs." Pet. App. 3a-4a. The panel took from *Sutton* the notion that "[t]he analysis must be class based" with respect to the major life activity of performing manual tasks as well. *Id.* 4a. Narrowing the field even further, the panel found it sufficient with respect to that major life activity that the "manual disability involve[] a 'class' of manual activities *affecting* the ability to perform tasks *at work*." *Id.* (emphases added).

Applying its new test, the panel found Williams disabled because "her impairment substantially limit[ed] her ability to perform the range of manual tasks associated with an assembly line job." *Id.* According to the panel, it was irrelevant that Williams remained perfectly capable of accomplishing any number of manual tasks outside the narrow subset of assembly-line duties that gave her difficulty. *Id.* And even though Williams, by her own admission, remained capable of manually wiping down cars as she had done for the previous three years, the panel nonetheless considered her disabled because she could not perform the narrow category of "manual activities that * * * require the gripping of tools and arms to be kept overhead or at shoulder level repetitively for an extended period of time." *Id.* 6a.

Judge Boggs dissented. He observed that under "decisions of this and other courts, [Williams's] inability to perform certain types of tasks would not likely constitute being disabled with regard to the major life activity of working," because an "inability to perform a single, particular job does not constitute a substantial limitation on working." *Id.* 9a. Yet "the opinion today mistakenly takes what is here primarily a *subset* of abilities related to working, the ability to 'perform manual tasks,' and erroneously treats a partial limitation there as substantially limiting a major life activity." *Id.* 11a (emphasis in original).

Allowing a plaintiff to defeat summary judgment by merely " 'show[ing] that her manual disability involves a "class" of manual activities affecting the ability to perform tasks at work * * * conflates (and erodes) the standards for demonstrating a substantial limitation on 'working' and on 'performing manual tasks.' " *Id.* "These are separate inquiries," *id.*, and Williams failed both. She plainly did not demonstrate a substantial limitation on working because her impairment foreclosed her from performing only a "single, particular job." *Id.* Nor did she establish a substantial limitation with respect to manual tasks, for "her limitation is mostly confined to a subset of job-specific tasks." *Id.*; *see id.* 9a-10a ("as the [majority] opinion * * * correctly notes, Williams's difficulty is almost exclusively with the inability to do manual tasks that 'require the gripping of tools and repetitive work with hands and arms extended at or above shoulder levels for extended periods of time' "). Indeed, "the record evidence shows that Williams can perform many manual tasks, beginning, most obviously, with the wiping task [at TMMK] that she already had been doing prior to her newest assignment." *Id.* 9a.

Judge Boggs found it particularly telling that there were "no citations in the court's opinion, either to regulations or to cases, indicating that such a specific and partial limitation is considered a disability." *Id.* 10a. The reason: the vast majority of federal courts have concluded that such job-specific restrictions do *not* substantially limit the major life activities of performing manual tasks, taking care of oneself, or, of course, working. *Id.* Based on these cases, Judge Boggs concluded that "[m]easuring Williams's limitation against plaintiffs claiming similar limitations on other major life activities, she does not appear disabled." *Id.*

TMMK filed a timely petition for rehearing and rehearing en banc, which the Sixth Circuit denied. *Id.* 57a. This Court granted certiorari. 121 S. Ct. 1600.

SUMMARY OF ARGUMENT

I. The ADA establishes a rigorous threshold for coverage under the statute: the Act only applies to those individuals who can establish that a physical or mental impairment "*substantially* limits one or more of [their] *major* life activities." 42 U.S.C. § 12102(2)(A) (emphases added). The court below undermined this "fundamental statutory requirement," *Albertson's, Inc.* v. *Kirkingburg*, 527 U.S. at 565, in finding respondent Williams disabled solely because of her inability to perform the particular manual tasks associated with her job—"gripping of tools and repetitive work with hands and arms extended at or above shoulder levels for extended periods of time." Pet. App. 4a. Williams's difficulties in performing those particular job-related assignments tell nothing about whether she is substantially limited in the basic life function of performing manual tasks. The Sixth Circuit not only failed to give effect to the terms of the statute, but also conflated the major life activities of performing manual tasks and working. By finding a disability based solely on an inability to "perform the manual tasks that are *job-related*," *id.* 5a (emphasis added), the court below circumvented the established rule that a disability must amount to more than an inability to do a specific job.

II. The findings in the ADA itself confirm that the statute extends only to those who are truly disabled—not those whose difficulties are essentially confined to the demands of a particular job. Congress explained that it enacted the ADA in response to the "serious and pervasive social problem" of discrimination against a "discrete and insular minority," 42 U.S.C. § 12101(a)(2), (7)—hardly an apt description of those who experience difficulty with tasks that "require the gripping of tools and repetitive work with hands and arms extended at or above shoulder levels for extended periods of time." Pet. App. 4a. Our society does not have a history of discriminating against such people. The Committee Reports on the ADA make clear that Congress was instead concerned

with those who suffer from more fundamental restrictions on basic daily functions, a view confirmed by the guidance provided by executive agencies implementing the Act. Dramatically broadening the reach of the ADA—as the decision below would do—would actually harm those it was intended to protect, by forcing the truly disabled to compete with those who are merely impaired in some limited way for reasonable workplace accommodations.

ARGUMENT

Among the three definitions of "disability" set forth in the ADA, the one at issue in this case provides that "[t]he term 'disability' means, with respect to an individual * * * a physical or mental impairment that substantially limits one or more of the major life activities of such individual." 42 U.S.C. § 12102(2)(A).[4] Here, there is no dispute that Williams's CTS constitutes a physical impairment within the meaning of the Act, *see* 29 C.F.R. § 1630.2(h)(1) (defining "physical impairment" as "[a]ny physiological disorder, or condition * * * affecting one or more of the following body systems: * * * musculoskeletal"), or that "performing manual tasks" is a major life activity, *see id.* § 1630.2(i) (listing "performing manual tasks" as one example of a major life activity). The question is whether Williams's inability to perform the particular manual tasks associated with her specific job, without more, demonstrates that she is "sub-

[4] The other two prongs of the ADA's disability definition state that an individual is disabled if she has "a record of such [a substantially limiting] impairment," 42 U.S.C. § 12102(2)(B), or is "regarded as having such an impairment," *id.* § 12102(2)(C). Williams claimed that she was disabled under both of these alternative formulations, but the District Court disagreed and entered judgment in Toyota's favor on those grounds as well. Pet. App. 43a-47a. Because the Sixth Circuit found Williams to be disabled under 42 U.S.C. § 12102(2)(A), it declined to address whether she would have prevailed under either of the other two provisions. Pet. App. 6a.

stantially limit[ed]" in the major life activity of performing manual tasks. As we explain below, the Sixth Circuit erred in so holding.

I. THE ADA RESTRICTS COVERAGE TO THOSE SUBSTANTIALLY LIMITED IN A MAJOR LIFE ACTIVITY, AND THE SIXTH CIRCUIT ERRED IN CONSIDERING ONLY A NARROW SUBSET OF THE MAJOR LIFE ACTIVITY OF PERFORMING MANUAL TASKS.

A. The ADA Extends To Impairments That Substantially Limit A Major Life Activity, Not Merely A Discrete Subset Of Such An Activity.

As with any statute, the starting point for determining the scope of the ADA is the language of the statute itself. *Williams* v. *Taylor*, 529 U.S. 420, 431 (2000); *Bailey* v. *United States*, 516 U.S. 137, 144-145 (1995). To be "disabled" and therefore come within the ambit of the ADA, an individual must have a "physical or mental impairment that substantially limits one or more of [her] major life activities." 42 U.S.C. § 12102(2)(A). On its face, the Act clearly contemplates that a disabling impairment must be one that imposes severe restrictions on an important, basic function in life. Not every impairment therefore is a disability, since not every impairment significantly constrains an individual's important life activities. *See Dutcher* v. *Ingalls Shipbuilding*, 53 F.3d 723, 726 (5th Cir. 1995) ("[a] physical impairment, standing alone, is not necessarily a disability as contemplated by the ADA"); *accord Gordon* v. *E.L. Hamm & Assocs., Inc.*, 100 F.3d 907, 911 (11th Cir. 1996), *cert. denied*, 522 U.S. 1030 (1997); *Kelly* v. *Drexel Univ.*, 94 F.3d 102, 108 (3d Cir. 1996).

Where, as here, the major life activity in question is the ability to perform manual tasks, individuals claiming coverage under the ADA must demonstrate that they are severely restricted from using their hands to perform a broad range of basic functions needed to meet the essential demands of

everyday life. That is because the Act "concerns itself only with limitations that are in fact substantial." *Albertson's, Inc.* v. *Kirkingburg*, 527 U.S. at 565. As this Court has held, although "[t]he ADA does not define 'substantially limits,' * * * 'substantially' suggests 'considerable' or 'specified to a large degree.' " *Sutton* v. *United Air Lines, Inc.*, 527 U.S. 471, 491 (1999) (quoting Webster's Third New International Dictionary 2280 (1976)). Put another way, "substantial" means " 'relating to or proceeding from the essence of a thing.' " *Id.* (quoting 17 Oxford English Dictionary 66-67 (2d ed. 1989)) (internal brackets omitted); *see* Webster's Third New International Dictionary 2280 (1993) ("of or relating to the main part of something").

Being able to use one's hands to meet the basic demands of life is the essence of the major life activity of performing manual tasks. For an impairment to "substantially limit" the ability to perform manual tasks, then, the impairment must impose a *considerable* restriction on the essential elements of that activity. It should thus come as no surprise that the lower federal courts—with the exception of the Sixth Circuit—have evaluated claims of manual disability by examining the extent to which an individual's impairment constrains his ability to "perform daily activities, including dressing himself [and] driving," *Chanda* v. *Engelhard/ICC*, 234 F.3d 1219, 1223 (11th Cir. 2000), as well as such fundamental tasks as the ability to "bathe, dress, write with a pencil and pen, work around the house, cook, and work." *Hilburn* v. *Murata Elecs. N. Am.*, 181 F.3d 1220, 1228 (11th Cir. 1999); *see Dutcher*, 53 F.3d at 726 (finding plaintiff not substantially limited where she could "feed herself, drive a car, attend her grooming, carry groceries, wash dishes, vacuum, and pick up trash with her impaired hand" and essentially "do all of the basic things she needs to do in life with her arm"). The point is that to be "substantially limited"—or limited to a "large degree"—in the major life activity of performing manual tasks, an individual "must

demonstrate that he is substantially limited in a range of manual tasks rather than a narrow category thereof," *Chanda* v. *Engelhard/ICC*, 234 F.3d at 1223, and the sorts of tasks the individual cannot accomplish must go to the heart of what makes the ability to perform manual tasks a major life activity.

The Sixth Circuit, however, found Williams substantially limited in performing manual tasks because she could not perform the narrow class of tasks that "require the gripping of tools and repetitive work with hands and arms extended at or above shoulder levels for extended periods of time." Pet. App. 4a. That idiosyncratic limitation says nothing about Williams's more general ability to conduct the important functions that make up the major life activity of performing manual tasks.

Indeed, as this Court has held, "the plain meaning of the word 'major' denotes comparative importance and suggests that the touchstone for determining an activity's inclusion under the statutory rubric is its significance." *Bragdon* v. *Abbott*, 524 U.S. 624, 638 (1998) (internal quotation and brackets omitted). The reason "performing manual tasks" is a major life activity is that the ability to use one's hands to accomplish basic functions is an undeniably important and significant aspect of life. Not so for the narrow subset of manual tasks "requir[ing] the gripping of tools and repetitive work with hands and arms extended at or above shoulder levels for extended periods of time." Pet. App. 4a. Simply because someone is limited—even substantially limited—from performing such a category of tasks does not mean that the person is substantially limited in a way that is significant and comparatively important to the conduct of life. In fact, it is impossible to measure whether a major life activity has been impaired to a "large degree" if the manual disability analysis begins and ends with some idiosyncratic manual function that an individual has difficulty executing.

Certainly the inability to engage in a repetitive task for extended periods of time with one's hands above shoulder level pales in "comparative importance" and "significance" when juxtaposed with the sort of functions Congress considered to be major life activities when it enacted the ADA. Although it did not expressly define the term "major life activity" in the Act itself, Congress was not writing on a blank slate. As this Court observed in *Bragdon*, "[t]he ADA's definition of 'disability' is drawn almost verbatim from the definition of 'handicapped individual' included in the Rehabilitation Act of 1973." 524 U.S. at 631. Accordingly, "the ADA must be construed to be consistent with the regulations issued to implement the Rehabilitation Act." *Id.* at 638. Those regulations specifically list as examples of major life activities such basic, fundamental functions as breathing, seeing, hearing, and walking. *See* 45 C.F.R. § 84.3(j)(2)(ii); 28 C.F.R. § 41.31(b)(2). In terms of importance, there is a profound difference between a substantial limitation on the ability to see or to hear and a substantial limitation on the particularized ability to engage in repetitive work with one's arms above shoulder level for an extended period of time while gripping a wooden tool.

Instead of considering whether Williams's impairment substantially limited her general ability to perform manual tasks compared to the average person in the general population, the Sixth Circuit posed a different question: did Williams "show that her manual disability involves a 'class' of manual activities affecting the ability to perform tasks at work"? Pet. App. 4a. The Sixth Circuit mistakenly assumed that such a class-based framework was mandated by "the language of the Act, the EEOC's interpretation and the Supreme Court's analysis in *Sutton*." *Id.* Not so. In *Sutton*, the question was whether the plaintiff had demonstrated a substantial limitation on the major life activity of *working*. 527 U.S. at 491. Looking to the EEOC regulations, this Court observed that the agency "uses a *specialized definition*

of the term 'substantially limits' when referring to the major life activity of working," whereby an individual must be " 'significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person.' " *Id.* (quoting 29 C.F.R. § 1630.2(j)(3)(i)) (emphasis added). There is no basis for applying to the major life activity of performing manual tasks a class-based framework that, by its own terms, is unique to the "specialized definition" of disability reserved for "working" claims. And, as applied by the Sixth Circuit, this class-based analysis led it into error, because that analysis allowed the court to find a disability based on Williams's difficulties with a *subset* of manual tasks, without ever even considering whether those difficulties constituted a substantial limitation on the overall major life activity of performing manual tasks.

The court below also compounded its analytic error by selecting an exceedingly narrow "class" by which to measure Williams's limitations: the class of "manual tasks associated with an assembly line job." Pet. App. 4a. That Williams experienced difficulty in a job requiring her to work repetitively for several hours at a time with her hands above her shoulders while gripping a wooden tool says nothing about her ability to perform manual tasks generally. It certainly does not alter the fact that, when it comes to the *basic* tasks of daily life, Williams can function just about as well as anyone else. The Sixth Circuit, however, turned the logic of the ADA on its head, finding that just because "Williams *can* perform a range of isolated, non-repetitive manual tasks performed over a short period of time, such as tending to her personal hygiene or carrying out personal or household chores, [that] does not [a]ffect a determination that her impairment substantially limits her ability to perform the range of manual tasks *associated with an assembly line job*." Pet. App. 4a (emphases added). But to say that an individual is "disabled" because she cannot use her hands in one isolated employment context even though she remains largely

unfettered in her ability to accomplish the basic manual functions demanded by daily life—grasping and picking up items, for example—is to "undercut the fundamental statutory requirement that only impairments causing 'substantial limitations' in individuals' ability to perform major life activities constitute disabilities." *Albertson's, Inc.* v. *Kirkingburg*, 527 U.S. at 565.

To be sure, the Sixth Circuit suggested that such specific limitations can "*affect* manual tasks associated with working, as well as manual tasks associated with recreation, household chores and living generally." Pet. App. 6a (emphasis added). Williams herself has made the same point before this Court. *See* Opp. Cert. 6 ("Ms. Williams' impairment affects activities of daily living and curtails activities."); *id.* 10 (Williams's "limitations affect activities of daily living"). But the fact that such a particular restriction might *affect* other areas of Williams's life is not to say, as the terms of the ADA require, that Williams is in fact *substantially limited* in accomplishing any of those activities. *See Ryan* v. *Grae & Rybicki, P.C.*, 135 F.3d 867, 870-871 (2d Cir. 1998) ("in assessing whether a plaintiff has a disability, courts have been careful to distinguish impairments which merely *affect* major life activities from those that *substantially limit* those activities") (emphasis in original); *Snow* v. *Ridgeview Med. Ctr.*, 128 F.3d 1201, 1207 (8th Cir. 1997) ("It is not enough that an impairment affect a major life activity."); *Roth* v. *Lutheran Gen. Hosp.*, 57 F.3d 1446, 1454 (7th Cir. 1995) ("not every impairment that affect[s] an individual's major life activities is a substantially limiting impairment").[5]

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[5] Indeed, as noted earlier, the Sixth Circuit recognized that Williams could "perform a range of isolated non-repetitive manual tasks performed over a short period of time, such as tending to her personal hygiene or carrying out personal or household chores." Pet. App. 4a. The Court of Appeals so found notwithstanding the fact that Williams "occasionally" needs help raising her arms to get dressed, J.A. 32, sometimes experiences discomfort after

Nor is there anything to the Sixth Circuit's contention that Williams's "ailments are analogous to having *missing, damaged or deformed* limbs that prevent her from doing the tasks associated with certain types of manual assembly line jobs * * * that require the gripping of tools and repetitive work with hands and arms extended at or above shoulder levels for extended periods of time." Pet. App. 4a (emphasis added). Regardless of whether Williams is no more capable than someone with deformed limbs of performing the exceptionally narrow class of assembly line jobs she was unable to do, the fact remains that, unlike the person with deformed or missing limbs, Williams is very much capable of using her hands to accomplish the basic, fundamental tasks that the average person normally performs with little difficulty. She can brush her teeth, she can do the laundry, she can pick up items from the floor, and she can drive a car—all with minimal, if any, discomfort. J.A. 13-15, 32-36. What is more, she has always insisted that she can perform several other assembly-line jobs at TMMK. Pet. App. 36a; J.A. 15, 24, 41. That is simply not the case for the person who has missing or deformed limbs. It is her ability to perform the *basic* tasks that the average person does in the course of a day that separates Williams from the truly disabled.[6]

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driving long distances, *id.* 35-36, and has been placed under a 20-pound lifting restriction by her treating physician, *id.* 45.

[6] By using the Sixth Circuit's language, we do not mean to suggest that an individual must be afflicted with "missing, damaged or deformed limbs" to be substantially limited in the major life activity of performing manual tasks. Nor do we contend that CTS, as a matter of law, can never constitute a disability under the ADA. It is not difficult to imagine a case of CTS so severe that it precludes an individual from performing a broad range of basic manual functions that the average person typically performs without difficulty. Where the Sixth Circuit erred was in finding that an individual with CTS—or any impairment for that matter—is disabled under the Act so long as she can demonstrate that her

B. The Sixth Circuit Decision Circumvents The Rule That An Inability To Perform A Single Job Is Not A Substantial Limitation On The Major Life Activity Of Working.

The Sixth Circuit's approach effectively makes an end-run around the restrictions both this Court and the EEOC have recognized for establishing a disability based on the major life activity of working. This Court has held that "[w]hen the major life activity under consideration is that of working, the statutory phrase 'substantially limits' requires, at a minimum, that plaintiffs allege they are unable to work *in a broad class of jobs*." *Sutton*, 527 U.S. at 491 (emphasis added). It therefore follows that

> To be substantially limited in the major life activity of working * * * *one must be precluded from more than one type of job, a specialized job, or a particular job of choice.* If jobs utilizing an individual's skills (but perhaps not his or her unique talents) are available, one is not precluded from a substantial class of jobs. Similarly, if a host of different types of jobs are available, one is not precluded from a broad range of jobs. [*Id.* at 492 (emphasis added).]

This accords with the approach adopted not only by the EEOC, *see* 29 C.F.R. § 1630.2(j)(3)(i) ("The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working."), but also by every federal court of appeals.[7]

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impairment limits her ability to perform the manual tasks associated with her job, regardless of whether she can perform a host of other manual tasks.

[7] *See Santiago Clemente* v. *Executive Airlines, Inc.*, 213 F.3d 25, 32 (1st Cir. 2000); *Colwell* v. *Suffolk County Police Dep't*, 158 F.3d 635, 643 (2d Cir. 1998), *cert. denied*, 526 U.S. 1018 (1999); *Olson* v. *General Elec. Astrospace*, 101 F.3d 947, 952 (3d Cir.

The Sixth Circuit's decision, however, eviscerates these well-established doctrinal and regulatory principles, and in the process legitimates an entire species of disability claims that had heretofore been universally rejected: those based on an inability to perform a single job. That is because the panel's approach improperly collapses the important distinction between the major life activity of working and that of performing manual tasks. Under the Sixth Circuit's rule, an ADA plaintiff is deemed "substantially limited" in the major life activity of *performing manual tasks* if she can demonstrate simply that her impairment "seriously reduces her ability to perform the manual tasks that are *job-related*." Pet. App. 5a (emphasis added); *see id.* 2a ("key issue" focuses on "plaintiff's physical difficulties in using her hands, arms and shoulders, *as required by her new job*") (emphasis added); *id.* 4a ("in order to be disabled the plaintiff must show that her manual disability involves a 'class' of manual activities affecting the ability to perform tasks at work").

With this new hybrid rule, thousands of individuals whose impairments only preclude them from working one particular job or one type of job can now evade the limits on the major life activity of working that this Court established in *Sutton* by simply recasting their impairment as one substantially limiting the major life activity of performing manual tasks.

1996); *Halperin* v. *Abacus Tech. Corp.*, 128 F.3d 191, 199 (4th Cir. 1997); *Dutcher* v. *Ingalls Shipbuilding*, 53 F.3d at 727; *McKay* v. *Toyota Motor Mfg., U.S.A., Inc.*, 110 F.3d 369, 373 (6th Cir. 1997); *Skorup* v. *Modern Door Corp.*, 153 F.3d at 515; *Gutridge* v. *Clure*, 153 F.3d 898, 901 (8th Cir. 1998), *cert. denied*, 526 U.S. 1115 (1999); *Broussard* v. *University of Cal.*, 192 F.3d 1252, 1256-57 (9th Cir. 1999); *Bolton* v. *Scrivner, Inc.*, 36 F.3d 939, 942-943 (10th Cir. 1994), *cert. denied*, 513 U.S. 1152 (1995); *Standard* v. *A.B.E.L. Servs., Inc.*, 161 F.3d 1318, 1327 (11th Cir. 1998); *Duncan* v. *Washington Metro. Area Transit Auth.*, 240 F.3d 1110, 1114 (D.C. Cir.) (en banc), *petition for cert. filed*, No. 00-1776 (May 25, 2001).

By doing so, it would no longer be fatal to their disability claims that they were precluded from only one particular job. Indeed, under the Sixth Circuit approach, all that is necessary to establish a disability is a showing that they are substantially limited in a *subset* of the requirements of a particular job—the manual tasks associated with that particular job. *See id.* 11a (Boggs, J., dissenting).

As this Court has noted, "there may be some conceptual difficulty in defining 'major life activities' to include work," since the exclusion from work would supply both the qualifying disability as well as the actionable discriminatory conduct. *Sutton*, 527 U.S. at 492. Accordingly, "even the EEOC has expressed reluctance to define 'major life activities' to include working and has suggested that working be viewed as a residual life activity, considered, as a last resort, *only* '[i]f an individual is not substantially limited with respect to *any other* major life activity.' " *Id.* (quoting 29 C.F.R. pt. 1630, App. § 1630.2(j)) (emphases added by Court). Although the court below purported to consider only the major life activity of performing manual tasks, not that of working, Pet. App. 5a, its manual tasks analysis raised all the same difficulties that have concerned this Court and the EEOC in the working context, because that analysis focused solely on the "ability to perform the manual tasks that are job-related." *Id.* [8]

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[8] The Sixth Circuit has adhered to this approach in subsequent cases. *See, e.g., Henderson* v. *Ardco, Inc.*, 247 F.3d 645, 652 (6th Cir. 2001) (applying holding in *Williams* even though ruling in that case "appears to combine assessment of * * * impairment in manual tasks and * * * impairment in working, and inquiries into the existence of the requisite level of impairment should, as a general matter, be conducted in a separate and distinct fashion for each major life activity"); *Kiphart* v. *Saturn Corp.*, 251 F.3d 573 (6th Cir. 2001) (jury could find disability based on substantial limitation with respect to "an entire class of manual activities associated with assembly-line and product-handling jobs involving

II. OTHER EVIDENCE OF LEGISLATIVE INTENT CONFIRMS THAT AN IMPAIRMENT MUST SIGNIFICANTLY RESTRICT A BASIC LIFE FUNCTION TO QUALIFY AS A DISABILITY.

A. Congress's Findings Confirm That Disability Status Under The ADA Depends On The Extent To Which An Individual Is Constrained From Performing The Basic Functions In Life.

Congress enacted the ADA to rectify a "serious and pervasive social problem": the historic "isolat[ion] and segregat[ion]" of individuals with disabilities. 42 U.S.C. § 12101(a)(2). In its statutory findings, Congress stated that

> individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypical assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society. [*Id.* § 12101(a)(7).]

Congress's invocation of the phrase "discrete and insular minority" is a "telling indication of its intent to restrict the ADA's coverage to a confined, and historically disadvantaged, class." *Sutton*, 527 U.S. at 494-495 (Ginsburg, J., concurring). *See also* 135 Cong. Rec. S10711 (daily ed. Sept. 7, 1989) ("For too long, individuals with disabilities have been excluded, segregated, and otherwise denied equal, effective, and meaningful opportunity to participate in the

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the use of vibrating, hand-held power tools and requiring frequent, repetitive twisting, bending, or flexing of the wrists, elbows, or neck").

economic and social mainstream of American life.") (Sen. Harkin).

Not to put too fine a point on it, individuals who are substantially limited in their ability to engage in repetitive work for extended periods of time with their arms raised above their shoulders while gripping a wooden tool—but who are otherwise perfectly capable of using their hands to perform basic manual tasks—have not been "historically * * * isolate[d] and segregate[d]"; they have not been relegated to "an inferior status in our society." 42 U.S.C. § 12101(a)(2), (6). Unlike individuals who struggle simply to use their hands to accomplish the basic demands of everyday life, those who are merely impaired in accomplishing discrete tasks "can be found in every social and economic class; they do not cluster among the politically powerless, nor do they coalesce as historical victims of discrimination." *Sutton*, 527 U.S. at 494 (Ginsburg, J., concurring). In the end, it is impossible to confer the status of "disabled" on such a class of persons without doing violence to the terms of the ADA and the congressional finding that the Act was intended to reach those who actually constitute a "discrete and insular minority."

Congress also found that "some 43,000,000 Americans have one or more physical or mental disabilities." 42 U.S.C. § 12101(a). The report that served as the "likely source" for this figure, *Sutton*, 527 U.S. 485-486, and other contemporaneous studies that reached a similar calculation, defined the disabled as persons who have "difficulty performing one or more *basic* physical activities" such as "seeing, speaking, walking, using stairs, lifting or carrying, getting around outside, getting around inside, and getting out of bed." National Council on Disability, *On the Threshold of Independence* 7 (1988) (emphasis added); *see Sutton*, 527 U.S. at 486-487 (pertinent studies defined disabled as "individuals with 'activity limitations' * * * who, relative to their age-sex group could not conduct '*usual*' activities: *e.g.*, attending

preschool, keeping house, or living independently") (citing *Digest of Data on Persons with Disabilities* 25 (1984); U.S. Dep't of Commerce, Bureau of the Census, *Statistical Abstract of the United States* 115 (Table 184) (1989)).

These various reports confirm that, when it enacted the ADA, Congress was clearly contemplating persons who were significantly impaired from performing the "basic" or "usual" activities in life. Whether someone is substantially limited in performing manual tasks therefore must depend on the extent to which that person is unable to use her hands to accomplish basic functions. Congress simply did not envision the ADA encompassing individuals who, though unable to use their hands to perform a particular job, were otherwise capable of day-to-day manual tasks.

B. The Legislative History Of The ADA Supports Limiting Coverage To Those Significantly Restricted In Important Life Functions.

The legislative history of the ADA confirms what the language of the statute makes clear: that coverage under the Act extends only to those who suffer severe restrictions in their ability to perform important, basic activities. To begin with, reports from both the House and Senate[9] emphasize that "[a] physical or mental impairment does not constitute a disability * * * for purposes of the ADA unless its severity is such that it results in a 'substantial limitation of one or more major life activities.' " H.R. Rep. No. 101-485, Pt. II, at 52 (1990); *accord* S. Rep. No. 101-116, at 22 (1989). These declarations clearly evince Congress's intent *not* to include all

[9] *See Garcia* v. *United States*, 469 U.S. 70, 76 (1984) ("In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which 'represen[t] the considered and collective understanding of those Congressmen involved in drafting and studying the proposed legislation.") (quoting *Zuber* v. *Allen*, 396 U.S. 168, 186 (1969)).

physically impaired individuals under the ADA's disability rubric. Lest there be any doubt, the Committees went on to note that "[a] person with a minor, trivial impairment * * * is not impaired in a major life activity." H.R. Rep. No. 101-485, Pt. II, at 52; *accord* S. Rep. No. 101-116, at 23.

Elsewhere in the Reports, the Committees explained that to suffer a "substantial limitation" in a "major life activity" means to be severely impaired in the ability to do basic functions that are performed with little or no difficulty by the average person in the general population. *See* H.R. Rep. No. 101-485, Pt. II, at 52; S. Rep. No. 101-116, at 23. That Congress was concerned with impairments that severely restrict the essence of an important life function is clear from the examples the House Committee provided: "a person who is a paraplegic will have a substantial difficulty in the major life activity of walking; a deaf person will have a substantial difficulty in hearing aural communications; and a person with lung disease will have a substantial limitation in the major life activity of breathing." H.R. Rep. No. 101-485, Pt. II, at 52.

The Committees explained that "[a] person is considered an individual with a disability * * * when the individual's *important* life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people." H.R. Rep. No. 101-485, Pt. II, at 52 (emphasis added); *accord* S. Rep. No. 101-116, at 23. In this case, Williams, when compared to most people, is not significantly restricted as to the conditions, manner, or duration under which she can perform basic manual tasks. Indeed, not only can she "tend[] to her personal hygiene" and "carry[] out personal or household chores," Pet. App. 4a, but she can even do other assembly-line jobs that require her to rub both hands in a back-and-forth motion against the exterior of an automobile. *See* J.A. 15, 24, 41; Pet. App. 9a ("the record evidence shows that Williams can perform many manual tasks, beginning, most obviously, with the wiping

task that she already had been doing prior to her newest assignment") (Boggs, J., dissenting). Her impairment prevents her only from "doing the tasks associated with certain types of manual assembly line jobs * * * that require the gripping of tools and repetitive work with hands and arms extended at or above shoulder levels for extended periods of time." Pet. App. 4a.

The Committees made it abundantly clear, however, that the fact that someone is unable to do a subset or a "class" of a major life activity not widely performed by the average person does not, without more, establish a disability under the ADA. By way of a hypothetical, the Committees explained: "A person who can walk for 10 miles continuously is not substantially limited in walking merely because on the eleventh mile, he or she begins to experience pain because most people would not be able to walk eleven miles without experiencing some discomfort." H.R. Rep. No. 101-485, Pt. II, at 52; *accord* S. Rep. No. 101-116, at 23. Nothing in the legislative history—much less the text of the ADA itself—suggests that Congress's hypothetical walker would suddenly be deemed substantially limited in the major life activity of walking if the ability to walk 11 continuous miles turned out to be related to a particular job he held, say, as a park ranger or an outdoor guide. The reason is obvious: The inability to walk 11 miles—job-related though it may be—indicates nothing about someone's ability to do the basic aspects of walking that are important to the average person on a day-to-day basis. The Sixth Circuit's contrary understanding of the ADA should be rejected.

C. Executive Agencies Have Consistently Construed The ADA To Extend Only To Significant Restrictions On Fundamental Life Activities.

All three Executive agencies charged with implementing the ADA have consistently interpreted the Act's disability

provision to require more than a mere inability to perform a category of activities defined by their relation to a particular job. *See* 28 C.F.R. pt. 35, App. A, § 35.104 (Department of Justice); 29 C.F.R. pt. 1630, App. § 1630.2 (EEOC); 49 C.F.R. § 37.3 (Department of Transportation). This Court generally respects such administrative pronouncements where, as here, the agencies "played a pivotal role in setting the statutory machinery in motion." *Ford Motor Credit Co.* v. *Milhollin*, 444 U.S. 555, 566 (1980) (internal quotation and brackets omitted). At the very least, such views "constitute a body of experience and informed judgment to which [this Court] may properly resort" for additional guidance. *Skidmore* v. *Swift Co.*, 323 U.S. 134, 140 (1944).[10]

Consistent with the text of the ADA, the Interpretive Guidance issued by the EEOC provides that major life activities "are those *basic* activities that the average person in the general population can perform with little or no difficulty." 29 C.F.R. pt. 1630, App. § 1630.2(i) (emphasis added). Here again, it is clear that the focus is on those who cannot do the sort of essential functions that most people perform in their lives. Holding one's hands and arms above the shoulders for hours on end while gripping a block of wood is not a basic activity of life.

The EEOC's Interpretive Guidance emphasizes that even when an impairment affects a major life activity, it frequently may not rise to the level of a disability: "*Many* impairments do not impact an individual's life to the degree that they constitute disabling impairments." *Id.* (emphasis added).

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[10] Although this Court has held that agency regulations implementing and enforcing Titles I, II, and III are entitled to deference under *Chevron U.S.A. Inc.* v. *NRDC, Inc.*, 467 U.S. 837, 844 (1984), *see Bragdon*, 524 U.S. at 646-647, it has noted that Congress did not specifically delegate to any agency the power to interpret "disability," and has reserved the question what level of deference such agency views deserve, *see Sutton*, 527 U.S. at 480.

Rather, as the ADA itself makes clear, the impairment must "substantially limit" a major life activity. That, in turn, means more than simply being unable to do a particular job. It means being "[u]nable to perform a major life activity that the average person in the general population can perform," 29 C.F.R. § 1630.2(j)(1)(i), or being "*[s]ignificantly restricted* as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity." *Id.* § 1630.2(j)(1)(ii) (emphasis added). As this Court has held, the EEOC's "codified regulations interpreting the term 'substantially limits' " are entirely consistent with the natural meaning of those words as requiring limitations of a "considerable" or "large degree." *Sutton*, 527 U.S. at 491.

Were this not enough, the EEOC's regulations go on to prescribe a rubric by which to measure whether an individual is, in fact, substantially limited in a major life activity that further demonstrates that an inability to do the tasks associated with a particular job is not, without more, a disability under the Act. Among the factors that the agency has deemed relevant to the inquiry are: "(i) [t]he nature and severity of the impairment; (ii) [t]he duration or expected duration of the impairment; and (iii) [t]he permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment." 29 C.F.R. § 1630.2(j)(2)(i)-(iii). If the only way in which an impairment limits an individual is to preclude that person from performing the functions required by a specific job, the "nature and severity" of that impairment can hardly be described as significantly restricting "[a] basic activit[y] that the average person in the general population can perform with little or no difficulty." 29 C.F.R. pt. 1630, App. § 1630.2(i).

D. The Policy Underlying The ADA Is Disserved By An Interpretation Broadening Its Reach Beyond The Truly Disabled.

1. The ADA "is not a general protection of medically afflicted persons." *Christian* v. *St. Anthony Med. Ctr., Inc.*, 117 F.3d 1051, 1053 (7th Cir. 1997), *cert. denied*, 523 U.S. 1022 (1998). It is a statute designed to alleviate discrimination against a discrete and insular minority of disabled individuals. The Sixth Circuit's decision, however, extended the Act's protections well outside its ambit. By according "disabled" status to those whose impairments restrict them only from performing a small subset of manual tasks, the Sixth Circuit created a broad class of claimants whose demands will inevitably conflict with those of the disabled individuals Congress intended to protect.

As explained above, Congress intended to "restrict the ADA's coverage to a confined, and historically disadvantaged, class." *Sutton*, 527 U.S. at 495 (Ginsburg, J., concurring). To cabin the reach of the statute in accordance with its aims, Congress imposed a "fundamental statutory requirement," *Albertson's, Inc.* v. *Kirkingburg*, 527 U.S. at 565: the ADA would be triggered only when an impairment imposed "substantial[] limits" on major life activities. 42 U.S.C. §12102(2)(A). The legislature repeatedly stated that an impairment that did not significantly impact one of life's important activities "does *not* constitute a disability" for purposes of the ADA. *See, e.g.*, H.R. Rep. No. 101-485, Pt. II, at 52 (emphasis added).

The Sixth Circuit read the Act to require much less. Its decision opens the ADA to enforcement not just by a "discrete and insular minority" of historically disadvantaged disabled people, 42 U.S.C. § 12101(a)(7), but a vast assembly of workers suffering from various lesser afflictions. Congress set markedly different bounds than those. As prior courts have recognized, " '[i]t would debase [the ADA's]

high purpose if the statutory protections available to those truly handicapped could be claimed by anyone whose disability was minor and whose relative severity of impairment was widely shared.' " *Francis* v. *City of Meriden*, 129 F.3d 281, 286 (2d Cir. 1997) (quoting *Forrisi* v. *Bowen*, 794 F.2d 931, 934 (4th Cir. 1986) (construing Rehabilitation Act)); *cf. Rodriguez* v. *United States*, 480 U.S. 522, 526 (1987) (noting that it "frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law") (emphasis in original).

Indeed, broadening the Act to protect the vast number of individuals who are *somewhat* impaired in performing *some* isolated manual tasks would harm the truly disabled. An employer's obligation to a disabled worker is not absolute; the ADA balances an employee's need for a specific accommodation against the burden on the employer of providing the accommodation. Where that burden becomes an "undue hardship," the employer's obligation ends. 42 U.S.C. § 12112(b)(5)(a); *see id.* § 12182(b)(2)(A)(iii)-(v) (addressing places of public accommodation); *cf. PGA Tour, Inc.* v. *Martin*, 121 S. Ct. 1879, 1893-94 (2001). If the number of individuals entitled to seek reasonable accommodations under the ADA increased exponentially—and a ruling favorable to respondent here would invite that result—the economic costs to employers, not to mention the logistical complications created by competing demands for accommodation, would likewise increase by orders of magnitude. The end result: with vastly more people entitled to seek reasonable accommodations, fewer employers will be able to make those accommodations without undue hardship, and truly disabled people will suffer the consequences. Lowering the threshold of the Act to capture workers who claim limited impairments—but who are otherwise capable of performing life's basic activities—will inexorably siphon off the resources employers can devote to assisting truly disabled persons with a legitimate need for protection under the ADA.

2. Interpreting the ADA to provide redress for individuals suffering from limited impairments also upsets the statute's interaction with workers' compensation laws. State and federal workers' compensation laws make up a "statutory system that establishes comprehensive medical and income benefits for employees who suffer work-related injuries." Joan T. A. Gabel, *et al.*, *The New Relationship Between Injured Worker and Employer: An Opportunity for Restructuring the System*, 35 Am. Bus. L.J. 403, 403 (1998). The ADA and workers' compensation laws coexist uneasily. As one commentator has noted, "[t]he workers' compensation system focuses on the extent to which an injured worker cannot perform his or her job * * * . The ADA, in contrast, is designed to obtain the highest possible productivity a disabled individual can offer." *Id.* at 415.

Acknowledging the tension between the two statutory systems, the EEOC has gone to some lengths to explain the difference in scope and purpose of the ADA and workers' compensation laws. *See EEOC Guidance on Workers' Compensation and ADA*, 8 FEP Manual (BNA) 405:7391-405:7403; *EEOC Technical Assistance Manual on the Employment Provisions (Title I) of the Americans With Disabilities Act*, 8 FEP Manual (BNA) 405:7055, at §§ 9.1-9.8. The Commission has made clear, for example, that impairments giving rise to a workers' compensation claim will not trigger the ADA unless they are "severe enough to substantially limit a major life activity," and that the ADA "does not require an employer to provide a reasonable accommodation for an employee with an occupational injury who does not have a disability as defined by the ADA." *EEOC: Guidance on Workers' Compensation and ADA*, 8 FEP Manual (BNA) at 405:7391, 405:7399. Accordingly, workers' compensation laws often capture employees whose impairments place them below the ADA's "floor"—*i.e.*, those who have work-related injuries, but who cannot show that those injuries significantly limit a major life activity. *Cf.*

Penny v. *United Parcel Serv.*, 128 F.3d 408, 415-416 (6th Cir. 1997) (plaintiff who had received workers' compensation for prior on-the-job injury was not disabled under ADA).[11]

When the Sixth Circuit lowered the bar for ADA claims, allowing plaintiffs to claim that their limited occupational injuries render them "disabled," it effectively eradicated the careful balance between the purpose and scope of the two remedial systems. Before the Sixth Circuit's decision, an employee did not automatically come under the ADA's protection by dint of an occupational injury. If respondent's view of the law prevails, however, the two spheres will converge: any occupational injury affecting an employee's ability to perform unique, job-related manual tasks will likely trigger the ADA, turning the statute into a de facto rider accompanying all state and federal workers' compensation laws. The practical effect of the Sixth Circuit's decision, if it is upheld, will be profoundly felt by employers asked to

[11] Another statute protects some individuals above the "ceiling" set by the ADA—those who cannot show that their disabilities can be reasonably accommodated at work. The Social Security Act "provides monetary benefits to every insured individual who is 'under a disability.' " *Cleveland* v. *Policy Mgmt. Sys. Corp.*, 526 U.S. 795, 801 (1999) (quoting 42 U.S.C. § 423(a)(1)). That Act defines "disability" as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). By conferring benefits on (among others) those whose severe disabilities cannot be reasonably accommodated by employers, the Social Security Act, like workers' compensation statutes, protects individuals outside the purview of the ADA. *Cf. Cleveland*, 526 U.S. at 805. While some overlap between the statutory fields exists, the ADA is designed to protect individuals between those two poles—those who are more than impaired, and less than completely disabled.

compensate *and* accommodate a brand-new privileged subclass of impaired—but not disabled—employees.

* * * *

The Sixth Circuit overturned the District Court's grant of summary judgment in favor of TMMK because it concluded that Williams's inability to perform the discrete tasks associated with her particular job established that she was substantially limited in the major life activity of performing manual tasks. For the reasons we have explained, such a specific and partial limitation simply does not demonstrate—nor does it give rise to any reasonable inference—that Williams is significantly restricted in a basic life function. Accordingly, the Sixth Circuit's ruling should be reversed and the District Court's award of summary judgment reinstated.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed.

Respectfully submitted,

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STATUTORY AND REGULATORY ADDENDUM

42 U.S.C. § 12101 provides:

§ 12101. Findings and purpose

(a) Findings

The Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and non-productivity.

(b) Purpose

It is the purpose of this chapter—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

42 U.S.C. § 12102 provides:

§ 12102. Definitions

As used in this chapter:

(1) Auxiliary aids and services

The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) Disability

The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) State

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

42 U.S.C. § 12111 provides:

§ 12111. Definitions

As used in this subchapter:

(1) Commission

The term "Commission" means the Equal Employment Opportunity Commission established by section 2000e-4 of this title.

(2) Covered entity

The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) Direct threat

The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(4) Employee

The term "employee" means an individual employed by an employer. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(5) Employer

(A) In general

The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this subchapter, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) Exceptions

The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of title 26.

(6) Illegal use of drugs

(A) In general

The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 801 et seq.). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) Drugs

The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(7) Person, etc.

The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 2000e of this title.

(8) Qualified individual with a disability

The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation

The term "reasonable accommodation" may include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) Undue hardship

(A) In general

The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered

In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—

(i) the nature and cost of the accommodation needed under this chapter;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

42 U.S.C. § 12112 provides:

§ 12112. Discrimination

(a) General rule

No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction

As used in subsection (a) of this section, the term "discriminate" includes—

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration—

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Covered entities in foreign countries

(1) In general

It shall not be unlawful under this section for a covered entity to take any action that constitutes discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

(2) Control of corporation

(A) Presumption

If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be engaged in by such employer.

(B) Exception

This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(C) Determination

For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on—

(i) the interrelation of operations;

(ii) the common management;

(iii) the centralized control of labor relations; and

(iv) the common ownership or financial control, of the employer and the corporation.

(d) Medical examinations and inquiries

(1) In general

The prohibition against discrimination as referred to in subsection (a) of this section shall include medical examinations and inquiries.

(2) Preemployment

(A) Prohibited examination or inquiry

Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) Acceptable inquiry

A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) Employment entrance examination

A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if—

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this chapter shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this subchapter.

(4) Examination and inquiry

(A) Prohibited examinations and inquiries

A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) Acceptable examinations and inquiries

A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) Requirement

Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

42 U.S.C. § 12113 provides:

§ 12113. Defenses

(a) In general

It may be a defense to a charge of discrimination under this chapter that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this subchapter.

(b) Qualification standards

The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) Religious entities

(1) In general

This subchapter shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) Religious tenets requirement

Under this subchapter, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

(d) List of infectious and communicable diseases

(1) In general

The Secretary of Health and Human Services, not later than 6 months after July 26, 1990, shall—

(A) review all infectious and communicable diseases which may be transmitted through handling the food supply;

(B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

(C) publish the methods by which such diseases are transmitted; and

(D) widely disseminate such information regarding the list of diseases and their modes of transmissability[1] to the general public.

Such list shall be updated annually.

(2) Applications

In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services under paragraph (1), and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(3) Construction

Nothing in this chapter shall be construed to preempt, modify, or amend any State, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot

[1] So in original. Probably should be "transmissibility".

be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissability[1] published by the Secretary of Health and Human Services.

42 U.S.C. § 12116 provides:

§ 12116. Regulations

Not later than 1 year after July 26, 1990, the Commission shall issue regulations in an accessible format to carry out this subchapter in accordance with subchapter II of chapter 5 of title 5.

42 U.S.C. § 12117 provides:

§ 12117. Enforcement

(a) Powers, remedies, and procedures

The powers, remedies, and procedures set forth in sections 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9 of this title shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment.

(b) Coordination

The agencies with enforcement authority for actions which allege employment discrimination under this subchapter and under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) shall develop procedures to ensure that administrative complaints filed under this subchapter and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this

[1] So in original. Probably should be "transmissibility".

subchapter and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this subchapter and Rehabilitation Act of 1973 not later than 18 months after July 26, 1990.

Selected Portions of Title 29 of the Code of Federal Regulations, Part 1630:

PART 1630—REGULATIONS TO IMPLEMENT THE EQUAL EMPLOYMENT PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT

§ 1630.1 Purpose, applicability, and construction.

(a) *Purpose.* The purpose of this part is to implement title I of the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), requiring equal employment opportunities for qualified individuals with disabilities, and sections 3(2), 3(3), 501, 503, 506(e), 508, 510, and 511 of the ADA as those sections pertain to the employment of qualified individuals with disabilities.

(b) *Applicability.* This part applies to "covered entities" as defined at § 1630.2(b).

(c) *Construction*—(1) *In general.* Except as otherwise provided in this part, this part does not apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790-794a), or the regulations issued by the Federal agencies pursuant to that title.

(2) *Relationship to other laws.* This part does not invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this part.

§ 1630.2 Definitions.

(a) *Commission* means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(b) *Covered Entity* means an employer, employment agency, labor organization, or joint labor management committee.

(c) *Person, labor organization, employment agency, commerce and industry affecting commerce* shall have the same meaning given those terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

* * *

(e) *Employer*—(1) *In general.* The term employer means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, from July 26, 1992 through July 25, 1994, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year and any agent of such person.

(2) *Exceptions.* The term employer does not include—

(i) The United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) A bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(f) *Employee* means an individual employed by an employer.

(g) *Disability* means, with respect to an individual—

(1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(2) A record of such an impairment; or

(3) Being regarded as having such an impairment. (See § 1630.3 for exceptions to this definition).

(h) *Physical or mental impairment* means:

(1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(i) *Major Life Activities* means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(j) *Substantially limits*—(1) The term *substantially limits* means:

(i) Unable to perform a major life activity that the average person in the general population can perform; or

(ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

(2) The following factors should be considered in determining whether an individual is substantially limited in a major life activity:

(i) The nature and severity of the impairment;

(ii) The duration or expected duration of the impairment; and

(iii) The permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment.

(3) With respect to the major life activity of *working*—

(i) The term *substantially limits* means significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.

(ii) In addition to the factors listed in paragraph (j)(2) of this section, the following factors may be considered in determining whether an individual is substantially limited in the major life activity of "working":

(A) The geographical area to which the individual has reasonable access;

(B) The job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is

also disqualified because of the impairment (class of jobs); and/or

(C) The job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).

* * *

(m) *Qualified individual with a disability* means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position. (See § 1630.3 for exceptions to this definition).

* * *

(o) *Reasonable accommodation.* (1) The term *reasonable accommodation* means:

(i) Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or

(ii) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

(iii) Modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

(2) *Reasonable accommodation* may include but is not limited to:

(i) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

(3) To determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

(p) *Undue hardship*—(1) *In general. Undue hardship* means, with respect to the provision of an accommodation, significant difficulty or expense incurred by a covered entity, when considered in light of the factors set forth in paragraph (p)(2) of this section.

(2) *Factors to be considered.* In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:

(i) The nature and net cost of the accommodation needed under this part, taking into consideration the availability of tax credits and deductions, and/or outside funding;

(ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;

(iii) The overall financial resources of the covered entity, the overall size of the business of the covered entity with respect to the number of its employees, and the number, type and location of its facilities;

(iv) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity; and

(v) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

* * *

§ 1630.3 Exceptions to the definitions of "Disability" and "Qualified Individual with a Disability"

(a) The terms *disability* and *qualified individual with a disability* do not include individuals currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

* * *

(d) *Disability* does not include:

(1) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) Compulsive gambling, kleptomania, or pyromania; or

(3) Psychoactive substance use disorders resulting from current illegal use of drugs.

(e) *Homosexuality and bisexuality* are not impairments and so are not disabilities as defined in this part.

§ 1630.4 Discrimination prohibited.

It is unlawful for a covered entity to discriminate on the basis of disability against a qualified individual with a disability in regard to:

(a) Recruitment, advertising, and job application procedures;

(b) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(c) Rates of pay or any other form of compensation and changes in compensation;

(d) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(e) Leaves of absence, sick leave, or any other leave;

(f) Fringe benefits available by virtue of employment, whether or not administered by the covered entity;

(g) Selection and financial support for training, including: apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;

(h) Activities sponsored by a covered entity including social and recreational programs; and

(i) Any other term, condition, or privilege of employment.

The term discrimination includes, but is not limited to, the acts described in §§1630.5 through 1630.13 of this part.

§ 1630.5 Limiting, segregating, and classifying.

It is unlawful for a covered entity to limit, segregate, or classify a job applicant or employee in a way that adversely

affects his or her employment opportunities or status on the basis of disability.

* * *

§ 1630.7 Standards, criteria, or methods of administration.

It is unlawful for a covered entity to use standards, criteria, or methods of administration, which are not job-related and consistent with business necessity, and:

(a) That have the effect of discriminating on the basis of disability; or

(b) That perpetuate the discrimination of others who are subject to common administrative control.

* * *

§ 1630.9 Not making reasonable accommodation.

(a) It is unlawful for a covered entity not to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

(b) It is unlawful for a covered entity to deny employment opportunities to an otherwise qualified job applicant or employee with a disability based on the need of such covered entity to make reasonable accommodation to such individual's physical or mental impairments.

(c) A covered entity shall not be excused from the requirements of this part because of any failure to receive technical assistance authorized by section 506 of the ADA, including any failure in the development or dissemination of any technical assistance manual authorized by that Act.

(d) A qualified individual with a disability is not required to accept an accommodation, aid, service, opportunity or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot, as a result of that rejection, perform the essential functions of the position, the individual will not be considered a qualified individual with a disability.

§ 1630.10 Qualification standards, tests, and other selection criteria.

It is unlawful for a covered entity to use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity.

* * *

§ 1630.15 Defenses.

Defenses to an allegation of discrimination under this part may include, but are not limited to, the following:

(a) *Disparate treatment charges.* It may be a defense to a charge of disparate treatment brought under §§1630.4 through 1630.8 and 1630.11 through 1630.12 that the challenged action is justified by a legitimate, nondiscriminatory reason.

(b) *Charges of discriminatory application of selection criteria*—(1) *In general.* It may be a defense to a charge of discrimination, as described in Sec. 1630.10, that an alleged application of qualification standards, tests, or selection criteria that screens out or tends to screen out or otherwise

denies a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished with reasonable accommodation, as required in this part.

(2) *Direct threat as a qualification standard.* The term "qualification standard" may include a requirement that an individual shall not pose a direct threat to the health or safety of the individual or others in the workplace. (See § 1630.2(r) defining direct threat.)

(c) *Other disparate impact charges.* It may be a defense to a charge of discrimination brought under this part that a uniformly applied standard, criterion, or policy has a disparate impact on an individual with a disability or a class of individuals with disabilities that the challenged standard, criterion or policy has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished with reasonable accommodation, as required in this part.

(d) *Charges of not making reasonable accommodation.* It may be a defense to a charge of discrimination, as described in § 1630.9, that a requested or necessary accommodation would impose an undue hardship on the operation of the covered entity's business.

* * *

Selected Portions of Title 29 of the Code of Federal Regulations, Part 1630, Appendix:

APPENDIX TO PART 1630—INTERPRETIVE GUIDANCE ON TITLE I OF THE AMERICANS WITH DISABILITIES ACT

BACKGROUND

The ADA is a federal antidiscrimination statute designed to remove barriers which prevent qualified individuals with

disabilities from enjoying the same employment opportunities that are available to persons without disabilities.

Like the Civil Rights Act of 1964 that prohibits discrimination on the bases of race, color, religion, national origin, and sex, the ADA seeks to ensure access to equal employment opportunities based on merit. It does not guarantee equal results, establish quotas, or require preferences favoring individuals with disabilities over those without disabilities.

However, while the Civil Rights Act of 1964 prohibits any consideration of personal characteristics such as race or national origin, the ADA necessarily takes a different approach. When an individual's disability creates a barrier to employment opportunities, the ADA requires employers to consider whether reasonable accommodation could remove the barrier.

The ADA thus establishes a process in which the employer must assess a disabled individual's ability to perform the essential functions of the specific job held or desired. While the ADA focuses on eradicating barriers, the ADA does not relieve a disabled employee or applicant from the obligation to perform the essential functions of the job. To the contrary, the ADA is intended to enable disabled persons to compete in the workplace based on the same performance standards and requirements that employers expect of persons who are not disabled.

However, where that individual's functional limitation impedes such job performance, an employer must take steps to reasonably accommodate, and thus help overcome the particular impediment, unless to do so would impose an undue hardship. Such accommodations usually take the form of adjustments to the way a job customarily is performed, or to the work environment itself.

This process of identifying whether, and to what extent, a reasonable accommodation is required should be flexible and involve both the employer and the individual with a disability. Of course, the determination of whether an individual is qualified for a particular position must necessarily be made on a case-by-case basis. No specific form of accommodation is guaranteed for all individuals with a particular disability. Rather, an accommodation must be tailored to match the needs of the disabled individual with the needs of the job's essential functions.

This case-by-case approach is essential if qualified individuals of varying abilities are to receive equal opportunities to compete for an infinitely diverse range of jobs. For this reason, neither the ADA nor this part can supply the "correct" answer in advance for each employment decision concerning an individual with a disability. Instead, the ADA simply establishes parameters to guide employers in how to consider, and take into account, the disabling condition involved.

INTRODUCTION

The Equal Employment Opportunity Commission (the Commission or EEOC) is responsible for enforcement of title I of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq. (1990), which prohibits employment discrimination on the basis of disability. The Commission believes that it is essential to issue interpretive guidance concurrently with the issuance of this part in order to ensure that qualified individuals with disabilities understand their rights under this part and to facilitate and encourage compliance by covered entities. This appendix represents the Commission's interpretation of the issues discussed, and the Commission will be guided by it when resolving charges of employment discrimination. The appendix addresses the major provisions of this part and explains the major concepts of disability rights.

The terms "employer" or "employer or other covered entity" are used interchangeably throughout the appendix to refer to all covered entities subject to the employment provisions of the ADA.

Section 1630.1 Purpose, Applicability and Construction

Section 1630.1(a) Purpose

The Americans with Disabilities Act was signed into law on July 26, 1990. It is an antidiscrimination statute that requires that individuals with disabilities be given the same consideration for employment that individuals without disabilities are given. An individual who is qualified for an employment opportunity cannot be denied that opportunity because of the fact that the individual is disabled. The purpose of title I and this part is to ensure that qualified individuals with disabilities are protected from discrimination on the basis of disability.

The ADA uses the term "disabilities" rather than the term "handicaps" used in the Rehabilitation Act of 1973, 29 U.S.C. 701-796. Substantively, these terms are equivalent. As noted by the House Committee on the Judiciary, "[t]he use of the term 'disabilities' instead of the term 'handicaps' reflects the desire of the Committee to use the most current terminology. It reflects the preference of persons with disabilities to use that term rather than 'handicapped' as used in previous laws, such as the Rehabilitation Act of 1973 * * *." H.R. Rep. No. 485 part 3, 101st Cong., 2d Sess. 26-27 (1990) (hereinafter House Judiciary Report); see also S. Rep. No. 116, 101st Cong., 1st Sess. 21 (1989) (hereinafter Senate Report); H.R. Rep. No. 485 part 2, 101st Cong., 2d Sess. 50-51 (1990) [hereinafter House Labor Report].

The use of the term "Americans" in the title of the ADA is not intended to imply that the Act only applies to United States citizens. Rather, the ADA protects all qualified indi-

viduals with disabilities, regardless of their citizenship status or nationality.

Section 1630.1(b) and (c) Applicability and Construction

Unless expressly stated otherwise, the standards applied in the ADA are not intended to be lesser than the standards applied under the Rehabilitation Act of 1973.

* * *

Section 1630.2(g) Disability

In addition to the term "covered entity," there are several other terms that are unique to the ADA. The first of these is the term "disability." Congress adopted the definition of this term from the Rehabilitation Act definition of the term "individual with handicaps." By so doing, Congress intended that the relevant caselaw developed under the Rehabilitation Act be generally applicable to the term "disability" as used in the ADA. Senate Report at 21; House Labor Report at 50; House Judiciary Report at 27.

The definition of the term "disability" is divided into three parts. An individual must satisfy at least one of these parts in order to be considered an individual with a disability for purposes of this part. An individual is considered to have a "disability" if that individual either (1) has a physical or mental impairment which substantially limits one or more of that person's major life activities, (2) has a record of such an impairment, or, (3) is regarded by the covered entity as having such an impairment. To understand the meaning of the term "disability," it is necessary to understand, as a preliminary matter, what is meant by the terms "physical or mental impairment," "major life activity," and "substantially limits." Each of these terms is discussed below.

Section 1630.2(h) Physical or Mental Impairment

This term adopts the definition of the term "physical or mental impairment" found in the regulations implementing section 504 of the Rehabilitation Act at 34 CFR part 104. It defines physical or mental impairment as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of several body systems, or any mental or psychological disorder.

It is important to distinguish between conditions that are impairments and physical, psychological, environmental, cultural and economic characteristics that are not impairments. The definition of the term "impairment" does not include physical characteristics such as eye color, hair color, left-handedness, or height, weight or muscle tone that are within "normal" range and are not the result of a physiological disorder. The definition, likewise, does not include characteristic predisposition to illness or disease. Other conditions, such as pregnancy, that are not the result of a physiological disorder are also not impairments. Similarly, the definition does not include common personality traits such as poor judgment or a quick temper where these are not symptoms of a mental or psychological disorder. Environmental, cultural, or economic disadvantages such as poverty, lack of education or a prison record are not impairments. Advanced age, in and of itself, is also not an impairment. However, various medical conditions commonly associated with age, such as hearing loss, osteoporosis, or arthritis would constitute impairments within the meaning of this part. See Senate Report at 22-23; House Labor Report at 51-52; House Judiciary Report at 28-29.

Section 1630.2(i) Major Life Activities

This term adopts the definition of the term "major life activities" found in the regulations implementing section 504 of the Rehabilitation Act at 34 CFR part 104. "Major life activities" are those basic activities that the average person in the general population can perform with little or no difficulty.

Major life activities include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. For example, other major life activities include, but are not limited to, sitting, standing, lifting, reaching. See Senate Report at 22; House Labor Report at 52; House Judiciary Report at 28.

Section 1630.2(j) Substantially Limits

Determining whether a physical or mental impairment exists is only the first step in determining whether or not an individual is disabled. Many impairments do not impact an individual's life to the degree that they constitute disabling impairments. An impairment rises to the level of disability if the impairment substantially limits one or more of the individual's major life activities. Multiple impairments that combine to substantially limit one or more of an individual's major life activities also constitute a disability.

The ADA and this part, like the Rehabilitation Act of 1973, do not attempt a "laundry list" of impairments that are "disabilities." The determination of whether an individual has a disability is not necessarily based on the name or diagnosis of the impairment the person has, but rather on the effect of that impairment on the life of the individual. Some impairments may be disabling for particular individuals but not for others, depending on the stage of the disease or disorder, the presence of other impairments that combine to make the impairment disabling or any number of other factors.

Other impairments, however, such as HIV infection, are inherently substantially limiting.

On the other hand, temporary, non-chronic impairments of short duration, with little or no long term or permanent impact, are usually not disabilities. Such impairments may include, but are not limited to, broken limbs, sprained joints, concussions, appendicitis, and influenza. Similarly, except in

rare circumstances, obesity is not considered a disabling impairment.

An impairment that prevents an individual from performing a major life activity substantially limits that major life activity. For example, an individual whose legs are paralyzed is substantially limited in the major life activity of walking because he or she is unable, due to the impairment, to perform that major life activity.

Alternatively, an impairment is substantially limiting if it significantly restricts the duration, manner or condition under which an individual can perform a particular major life activity as compared to the average person in the general population's ability to perform that same major life activity. Thus, for example, an individual who, because of an impairment, can only walk for very brief periods of time would be substantially limited in the major life activity of walking. It should be noted that the term "average person" is not intended to imply a precise mathematical "average."

Part 1630 notes several factors that should be considered in making the determination of whether an impairment is substantially limiting. These factors are (1) the nature and severity of the impairment, (2) the duration or expected duration of the impairment, and (3) the permanent or long term impact, or the expected permanent or long term impact of, or resulting from, the impairment. The term "duration," as used in this context, refers to the length of time an impairment persists, while the term "impact" refers to the residual effects of an impairment. Thus, for example, a broken leg that takes eight weeks to heal is an impairment of fairly brief duration. However, if the broken leg heals improperly, the "impact" of the impairment would be the resulting permanent limp. Likewise, the effect on cognitive functions resulting from traumatic head injury would be the "impact" of that impairment.

The determination of whether an individual is substantially limited in a major life activity must be made on a case by case basis. An individual is not substantially limited in a major life activity if the limitation, when viewed in light of the factors noted above, does not amount to a significant restriction when compared with the abilities of the average person. For example, an individual who had once been able to walk at an extraordinary speed would not be substantially limited in the major life activity of walking if, as a result of a physical impairment, he or she were only able to walk at an average speed, or even at moderately below average speed.

It is important to remember that the restriction on the performance of the major life activity must be the result of a condition that is an impairment. As noted earlier, advanced age, physical or personality characteristics, and environmental, cultural, and economic disadvantages are not impairments. Consequently, even if such factors substantially limit an individual's ability to perform a major life activity, this limitation will not constitute a disability. For example, an individual who is unable to read because he or she was never taught to read would not be an individual with a disability because lack of education is not an impairment. However, an individual who is unable to read because of dyslexia would be an individual with a disability because dyslexia, a learning disability, is an impairment.

If an individual is not substantially limited with respect to any other major life activity, the individual's ability to perform the major life activity of working should be considered. If an individual is substantially limited in any other major life activity, no determination should be made as to whether the individual is substantially limited in working. For example, if an individual is blind, i.e., substantially limited in the major life activity of seeing, there is no need to determine whether the individual is also substantially limited in the major life activity of working. The determination of

whether an individual is substantially limited in working must also be made on a case by case basis.

This part lists specific factors that may be used in making the determination of whether the limitation in working is "substantial." These factors are:

(1) The geographical area to which the individual has reasonable access;

(2) The job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs); and/or

(3) The job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).

Thus, an individual is not substantially limited in working just because he or she is unable to perform a particular job for one employer, or because he or she is unable to perform a specialized job or profession requiring extraordinary skill, prowess or talent. For example, an individual who cannot be a commercial airline pilot because of a minor vision impairment, but who can be a commercial airline co-pilot or a pilot for a courier service, would not be substantially limited in the major life activity of working. Nor would a professional baseball pitcher who develops a bad elbow and can no longer throw a baseball be considered substantially limited in the major life activity of working. In both of these examples, the individuals are not substantially limited in the ability to perform any other major life activity and, with regard to the major life activity of working, are only unable to perform

either a particular specialized job or a narrow range of jobs. See *Forrisi* v. *Bowen*, 794 F.2d 931 (4th Cir. 1986); *Jasany* v. *U.S. Postal Service*, 755 F.2d 1244 (6th Cir. 1985); *E.E Black, Ltd.* v. *Marshall*, 497 F. Supp. 1088 (D. Hawaii 1980).

On the other hand, an individual does not have to be totally unable to work in order to be considered substantially limited in the major life activity of working. An individual is substantially limited in working if the individual is significantly restricted in the ability to perform a class of jobs or a broad range of jobs in various classes, when compared with the ability of the average person with comparable qualifications to perform those same jobs. For example, an individual who has a back condition that prevents the individual from performing any heavy labor job would be substantially limited in the major life activity of working because the individual's impairment eliminates his or her ability to perform a class of jobs. This would be so even if the individual were able to perform jobs in another class, e.g., the class of semi-skilled jobs. Similarly, suppose an individual has an allergy to a substance found in most high rise office buildings, but seldom found elsewhere, that makes breathing extremely difficult. Since this individual would be substantially limited in the ability to perform the broad range of jobs in various classes that are conducted in high rise office buildings within the geographical area to which he or she has reasonable access, he or she would be substantially limited in working.

The terms "number and types of jobs" and "number and types of other jobs," as used in the factors discussed above, are not intended to require an onerous evidentiary showing. Rather, the terms only require the presentation of evidence of general employment demographics and/or of recognized occupational classifications that indicate the approximate number of jobs (*e.g.*, "few," "many," "most") from which an individual would be excluded because of an impairment.

If an individual has a "mental or physical impairment" that "substantially limits" his or her ability to perform one or more "major life activities," that individual will satisfy the first part of the regulatory definition of "disability" and will be considered an individual with a disability. An individual who satisfies this first part of the definition of the term "disability" is not required to demonstrate that he or she satisfies either of the other parts of the definition. However, if an individual is unable to satisfy this part of the definition, he or she may be able to satisfy one of the other parts of the definition.

* * *